

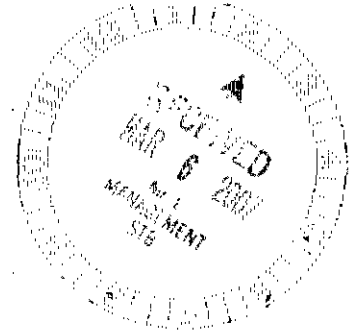


KAPLAN KIRSCH ROCKWELL

March 6, 2007

Honorable Vernon A. Williams
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

218750



**Re: James Riffin d/b/a The Northern Central Railroad –
Acquisition and Operation – In Baltimore City, MD
Finance Docket No. 34982**

Dear Sir:

I am enclosing an original and ten copies of Comments of the Maryland Transit Administration in Response to James Riffin's Response to CSXT, MTA and BSM Comments and Motion for Determination in the above referenced proceeding. Please date stamp the extra copy provided and return to our messenger. Please note that a 3.5 inch diskette is enclosed with these documents.

Sincerely,

Charles A. Spitulnik

Enclosure

cc: Mr. James Riffin
Christopher McNally, Esquire
Louis Gitomer, Esquire

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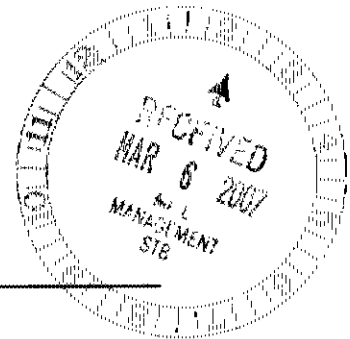
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**Before the
Surface Transportation Board
Washington, D.C.**

Finance Docket No. 34982



**James Riffin d/b/a The Northern Central Railroad –
Acquisition and Operation Exemption– In Baltimore City, MD**

**COMMENTS OF THE MARYLAND TRANSIT ADMINISTRATION
IN RESPONSE TO JAMES RIFFIN'S RESPONSE TO CSXT, MTA AND BSM
COMMENTS
AND
MOTION FOR DETERMINATION**

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Counsel for the Maryland Transit
Administration

Dated: March 6, 2007

**Before the
Surface Transportation Board
Washington, D.C.**

Finance Docket No. 34982

**James Riffin d/b/a The Northern Central Railroad –
Acquisition and Operation Exemption – In Baltimore City, MD**

**COMMENTS OF THE MARYLAND TRANSIT ADMINISTRATION
IN RESPONSE TO JAMES RIFFIN'S RESPONSE TO CSXT, MTA AND BSM
COMMENTS
AND
MOTION FOR DETERMINATION**

Pursuant to the order issued in this proceeding on February 8, 2007, the Maryland Transit Administration ("MTA"), by counsel, hereby submits these comments in response to the Response and a Motion for Determination submitted by James Riffin d/b/a The Northern Central Railroad ("Riffin") on February 20, 2007 (the "Riffin Response") in the above-captioned proceedings.

ARGUMENT

Riffin's Comments fail to address the multiple objections to the Notice of Exemption ("NOE") that he had submitted in this proceeding on January 12, 2007. Even with the additional time provided by this Board's order temporarily staying the effective date of the NOE, Riffin has still failed to satisfy fundamental factual predicates to the use of the Class Exemption in 49 C.F.R. Part 1150 for acquisition of a rail line. He has not (1) identified the current owner or owners from whom the purported subject property line might be acquired or (2) described the nature and schedule of any transaction by which the acquisition would be effected. The Riffin Response, in fact, reaches none of the shortcomings of the NOE that were identified in MTA's

Petition to Revoke and Motion to Stay (both filed on February 2, 2007). The information submitted by Riffin on February 20 fails to cure the previously identified deficiencies in the NOE, fails to respond to arguments raised by MTA, the Baltimore Streetcar Museum ("BSM") and CSX Transportation, Inc. ("CSXT") and/or is irrelevant to the Board's consideration of the Notice. Riffin's remarks are misleading and only further clutter the record and waste the Board's administrative resources.¹ MTA therefore reiterates its request that the Board revoke the Notice of Exemption.

The numbering of MTA's comments below corresponds to that of Riffin's remarks.

RIFFIN'S COMMENTS FAIL TO DEFEAT MTA'S EARLIER ASSERTIONS THAT THE PURPORTED NOTICE OF EXEMPTION IS INCOMPLETE, INCLUDES ERRONEOUS OR UNVERIFIABLE AND THEREFORE POTENTIALLY MISLEADING INFORMATION AND SHOULD BE REVOKED.

Riffin Comment 1. The Northern Central Railroad ("NCR") is not a Class III carrier. Neither of the proceedings cited by Riffin that relate to lines of railroad in Allegany County, Maryland, and Raritan, New Jersey has any connection at all to the NCR. The Board revoked two previous notices of exemption in which Riffin alleged that the NCR was a Class III carrier. See F.D. No. 34484, *James Riffin D/B/A The Northern Central R. – Acquisition and Operation Exemption – In York Co., PA, and Baltimore Co., MD, slip op.* (Service Date April 20, 2004) ("Riffin I"); F.D. No. 34501, *James Riffin D/B/A The Northern Central Railroad – Acquisition and Operation Exemption – In York Co., PA, slip op.* (Service Date February 23, 2005) ("Riffin II"). As a result, any action that Riffin asserts that is based on an allegation NCR is a Class III carrier is based on a false premise and therefore invalid.

¹It is not clear to MTA that Riffin is authorized in the first instance to submit pleadings in proceedings before this Board. Riffin is not admitted to practice law in Maryland. Moreover, MTA has been unable to determine that James Riffin has been accepted as a practitioner before the Board as required pursuant to 49 C.F.R. Part 1103.

(a) In STB Docket No. AB-55 (Sub-No. 659-X), *CSX Transportation, Inc. – Abandonment Exemption – In Allegany County MD, slip op.* (Service Date August 18, 2006), the Board permitted Mr. Riffin in his individual capacity to be substituted as the purchaser of the line with respect to an Offer of Financial Assistance (“OFA”). However, Riffin cannot successfully assert that, since the Board granted Mr. Riffin’s request to be substituted as the purchaser with respect to the OFA, he is therefore a Class III railroad for the purposes of the instant NOE. The NCR was not a party to any matter with respect to the OFA petition, and Mr. Riffin in his individual capacity did not pursue the OFA “d/b/a/ The Northern Central Railroad”. Therefore, he cannot rely on any status conferred by virtue of the proceedings in connection with STB Docket No. AB-55 (Sub-No. 659-X) to maintain a claim that NCR is a Class III carrier.

(b) The notice of exemption filed in connection with STB Finance Docket No. 34963, *James Riffin d/b/a The Raritan Valley Connecting Railroad – Acquisition and Operation Exemption – On Raritan Valley Connecting Track, slip op.* (filed on November 21, 2006) (“*Raritan*”) cannot be relied on to support Riffin’s assertion that he or The Raritan Valley Connecting Railroad is a Class III carrier. Although the exemption in *Raritan* appears to have become effective,² there is no evidence that Mr. Riffin has acquired any rights thereunder. Unless and until Mr. Riffin acquires the proposed line or any rights to operate on that line, neither he nor The (putative) Raritan Valley Connecting Railroad can claim Class III carrier status pursuant to either 49 C.F.R. §1150.31 or 49 C.F.R.

² Several parties in that proceeding have questioned that transaction, but, to the best of MTA’s knowledge, this Board has not stayed its effective date.

§1150.41. Moreover, even if James Riffin d/b/a The Raritan Valley Connecting Railroad had secured Class III carrier status with respect to the line at issue in *Raritan*, such status would create no rights in Maryland as to NCR pursuant to the subject proceeding.³

The remarks offered by Riffin fail to cure the defects in the NOE previously identified in MTA's Motion to Revoke, and leaves the Board with a Notice that is no more sufficient than two notices previously submitted by Mr. Riffin and revoked by the Board. *Riffin I; Riffin II*.

Riffin Comments 2 through 8. Riffin fails to establish (1) that the target line has not been abandoned and (2) the current ownership of that line. He also misleads the Board by relying on unverifiable and potentially misleading information in support of his assertions.

First, Riffin fails to establish that the target line has not been abandoned. MTA does not dispute that a line was properly abandoned pursuant to *Maryland & P.R. Co. Abandonment*, 295 I.C.C. 719 (1958) and, as Riffin concedes, such abandonment has not been amended or reversed by any subsequent action of the Board. Riffin cites no authority for the proposition that any other railroad operated this line.⁴

Instead, he offers a variety of conclusory remarks based on (a) his personal observation of "physical evidence" in part of the area he purports to describe in the NOE; (b) various unverified sources of information unrelated to either the Board or any land registry and whose currency and accuracy cannot be established; and (c) Board determinations that may or may not relate to the subject Notice. Although it is far from clear that the conclusion he reaches is correct, it appears that Riffin attempts to establish that the line he wishes to acquire in connection

³ Riffin also misleadingly attempts in *Raritan* to rely on reference to STB Docket No. AB-55 (Sub-No. 659-X), discussed above, as evidence of his status as a Class III carrier.

⁴ In fact, it is not absolutely clear from the information submitted in this proceeding that the line he purports to seek to acquire was in fact the property that was the subject of that abandonment.

with the NOE is still an operating line. However, the only definitive action by the Board to which Riffin is able to refer is the abandonment pursuant to *Maryland & P.R. Co. Abandonment, supra*.

Second, Riffin fails to demonstrate the identity of the current owner or owners of the alleged line. He attempts to rely on his loose observations and factual leaps from observation to old (and unverified) documents, then on inferences drawn from the combination of those observations and documents to “conclusively establish” that the Pennsylvania Railroad (“PRR”) acquired the portion of line abandoned by the Maryland & Pennsylvania Railroad in 1958 and that the Norfolk Southern Railway Company (“NS”) currently owns the target line as successor in interest to PRR. Riffin’s assertions to the contrary notwithstanding, inferred use of the line by PRR or any other party is not evidence of any transfer or the acquisition of any ownership rights. Riffin provides no documents that support any element of his chain of suppositions. In fact, he concedes that he has no such information and states in item 8 that Riffin “continues to research this matter”. These speculative musings do not satisfy the requirement of 49 C.F.R. 1150.43(e)(1)⁵ to provide the name and address of the party from whom Riffin would acquire the target line.

Third, Riffin misleads the Board by describing the documents he attaches as Exhibit 1 to his Notice as having been obtained from the “Baltimore County, Maryland Web Site”. Instead, it comes from <http://www.btco.net/ghosts/railroads/mpa/mapa.html>, a website “administered and updated by Adam Paul”. The material on that website can hardly be said to present a verifiable record of conditions or ownership that prove anything about the current ownership or regulatory status of the target line.

⁵ This is the section under which Riffin filed, although MTA does not concede that this is the part of the regulations that actually applies to the purported transaction.

Similarly, Exhibit 2 states on its face that the source of the material depicted was prepared by the "Baltimore Society of Model Engineers," which is "a model railroad club, that was formed by a group of local modelers in 1932." www.modelengineers.com/about.html. Exhibit 2 purports to show conditions that existed in 1955. However, nothing in that diagram can lead this Board to a conclusion about the identity of the party (or parties) that would transfer this property to Riffin. Nor does it answer any of the other numerous questions raised by MTA, BSM or CSXT. The instant Notice is misleading and should be revoked.

Riffin Comment 9. The Board's regulations recognize that a party can file a Notice of Exemption prior to consummation of an agreement.⁶ However, Riffin has failed to produce any evidence that such a transaction is even pending. In view of his inability to establish the identity of the owner, this is not surprising. It is, however, fatal to his attempts to persuade the Board that this transaction is real.

Riffin Comment 10. Riffin's characterization of conversations he purportedly conducted with CSXT representatives or personnel, generally or in connection with other STB proceedings, is not relevant to the Board's consideration of this matter and does not constitute evidence of any agreement between Riffin and CSXT or any one else with respect to the instant matter or any other STB proceeding.

Riffin Comment 11. Riffin's statements about the connection to the interstate rail system do not address the defects in his purported NOE.

Riffin Comment 12. The only information Riffin provides to support the assertion that his proposed activities will not interfere with BSM's or MTA's operations is Exhibit 3, a hand-drawn sketch whose source is unspecified, which is not drawn to any accurate scale, and which

⁶ 49 C.F.R. §1150.43 (e)(1) and (2); 49 C.F.R. §1150.33(e)(1). Both the regulations that Riffin identified as the basis for his filing, and the regulations that more likely really apply to the putative transaction provide that a person may file a notice prior to consummating an acquisition agreement, but both contemplate an *identifiable* transaction.

contains no indication of mile markers, extent of right-of-way or other objective means of ascertaining what the sketch depicts. Without data that accurately describes the line and its ownership, there is no way to confirm the accuracy of Riffin's assertions.

Riffin Comment 13. Riffin's statement that a "railroad need not own the real estate its line is on" is correct as a broad statement of policy. However, nothing in this comment helps to determine who actually owns the target line, or more importantly whether that owner has any interest in permitting Riffin to acquire sufficient interest to permit rail operations to commence.

Riffin Comment 14. Since Riffin has provided no precise description of the property he proposes to acquire, it is impossible for any party to ascertain with certainty whether the property includes any historic structures.

Riffin Comment 15. Riffin's conclusory statement to the contrary notwithstanding, the information provided does not address the questions MTA, BSM and CSXT have raised. So far, the record in this proceeding continues to justify revocation of the NOE.

RIFFIN'S MOTION FOR DETERMINATION SHOULD BE DENIED BASED ON HIS FAILURE TO PROVIDE SUFFICIENT INFORMATION ON WHICH THE BOARD MIGHT MAKE SUCH A DETERMINATION.

Riffin Comment 17. Riffin has failed to provide the Board with sufficient information that would allow the Board to determine that the target line is still a line of railroad. All evidence Riffin has produced in the course of these proceedings is to the contrary, as discussed above. The Board should deny Riffin's motion.

Riffin Comment 18. Riffin has the obligation to ensure that the NOE is proper. It is not. The NOE should be revoked and this proceeding dismissed.

Riffin Comments 19 and 20. Contrary to Riffin's assertions, the Board determines the appropriateness of a party's use of the expedited exemption procedure according to whether the

exemption itself is of a routine and uncontroversial nature. Riffin's appearance at the Board in this proceeding, and the unfounded assertions he makes, coupled with the strong opposition his proposal has generated, demonstrate that this purported transaction is neither routine nor uncontroversial. The NOE should be revoked.

The Board has previously explained when use of the "class exemption" procedure is appropriate. This is not such a case. In a previous proceeding involving one of Mr. Riffin's attempts to bootstrap rail carrier status from a transaction that did not really exist, this Board explained the rationale behind the creation of the expedited exemption process, as follows:

Under the licensing provisions of 49 U.S.C. 10901, a noncarrier, such as NCR, may acquire and operate a rail line only if the Board makes an express finding that the proposal is not inconsistent with the "public convenience and necessity." That means that the Board must examine and weigh the public interest in the acquisition and operation that is being proposed. Under 49 U.S.C. 10502 and 49 CFR 1121, a party may request an exemption from the formal application procedures of section 10901, on the grounds that full regulatory scrutiny is not necessary to carry out the rail transportation policy and that either the exemption is limited in scope or regulation is not needed to protect shippers from an abuse of market power.

There are some situations in which approval would be so routine and uncontroversial that there is an expedited "class exemption" procedure allowing the parties to obtain Board authorization subject only to an after-the-fact Board review if objections are received. Thus, under 49 CFR 1150.31, a noncarrier can obtain approval to acquire and operate a line of railroad within 7 days. That authority can later be revoked under 49 U.S.C. 10502(d) or treated as void ab initio if the exemption notice is found to have contained false or misleading information. See Class Exemption — Acq. & Oper. of R. Lines Under 49 U.S.C. 10901, 1 I.C.C.2d 810, 812, 817 (1985), aff'd sub nom. Illinois Commerce Comm'n v. ICC, 817 F.2d 145 (D.C. Cir. 1987). However, the class exemption process is not appropriate for controversial cases in which a more detailed record is required than what is produced through a notice invoking a class exemption. See, e.g., The Burlington Northern and Santa Fe Railway Company — Acquisition and Operation Exemption — State of South Dakota, STB Finance Docket No. 34645 (STB served Jan. 14, 2005); Riverview Trenton Railroad Company — Acquisition and Operation Exemption — Crown Enterprises, Inc., STB Finance Docket No. 33980 (STB served Feb. 15, 2002); Jefferson Terminal

Railroad Co. — Acquisition and Operation Exemption — Crown Enterprises, Inc., STB Finance Docket No. 33950 (STB served Mar. 19, 2001).

*Riffin II, slip op. at 6.*⁷

The transaction described here, putting aside the substantial question as to whether there actually is a transaction at all, is one that merits the same treatment that the Board gave to the transactions in both *Riffin I* and *Riffin II*:

As the Board previously instructed these parties in a decision in STB Finance Docket No. 34484, if NCR chooses to pursue its proposal, it must provide more detailed information in the form of a petition for an exemption under 49 U.S.C. 10502 and 49 CFR 1121, or a full application under 49 U.S.C. 10901 and 49 CFR 1150. Those procedures are designed to elicit a more complete record on which we can determine whether the public convenience and necessity would be met by allowing the acquisition and operation to move forward.

Riffin II, slip op. at 7.

The transaction that Riffin posits here, like the purported ones in his previous appearances before this Board and like the other proceedings referred to in *Riffin II, supra*, requires much more information than the scant and purely hypothetical data he has presented. In the cases cited in *Riffin II*, the Board found that substantial factual and legal issues existed that would require additional scrutiny and development of a more complete record than the notice of exemption provides, and revoked the class exemption, requiring the parties to submit more information. See, STB Finance Docket No. 34645, *The Burlington Northern and Santa Fe Railway Company – Acquisition and Operation Exemption – State of South Dakota* (Service

⁷ MTA acknowledges that Riffin has submitted this NOE under 49 U.S.C. §10902, not §10901. However, the policies that underlie the creation and use of the class exemption process under 49 U.S.C. §10901 were cited by the parties that sought the creation of the rules adopted by the Board in 49 C.F.R. §1150.43, as well as by the Board in the Notice that proposed the adoption of these rules. See STB Docket *Ex Parte* No. 529, *Class Exemption for Acquisition or Operation of Rail Lines by Class III Rail Carriers Under 49 U.S.C. 10902*, 61 Fed Reg. 11802 (March 22, 1996). The Board referred to the similarities between the criteria for approval of transactions under §10901 and §10902, approved a procedure that is in many respects similar to that established for §10901 transactions, noting that the class exemption process for §10901 transactions had been “working well.” STB *Ex Parte* No. 529, *Class Exemption for Acquisition or Operation of Rail Lines By Class III Rail Carriers Under 49 U.S.C. 10902*, 1 S.T.B. 95 (1996), review denied sub nom. *U.T.U. – III. Legis Bd. v. STB*, 132 F.3d 1982 (Table) (D.C. Cir. 1997).

Date January 14, 2005) (revoking a class exemption on the basis that, before any rights to rail property could be conveyed to the applicant, the applicant had to first prevail in litigation pending at the time the exemption was filed, and that the contemplated transaction was therefore “complicated and controversial”); STB Finance Docket No. 33980, *Riverview Trenton Railroad Company – Acquisition and Operation Exemption – Crown Enterprises, Inc.* (Service Date February 15, 2002) and STB Finance Docket No. 34040, *Riverview Trenton Railroad Company – Petition for an Exemption from 49 U.S.C. 10901 to Acquire and Operate a Rail Line in Wayne County, MI* (Service Date February 15, 2002) (revoking a class exemption in a case that had “attracted substantial controversy and opposition, including opposition from public agencies” where facts and legal issues fundamental to the Board’s decision were in dispute); STB Finance Docket No. 33950, *Jefferson Terminal Railroad Company – Acquisition and Operation Exemption – Crown, Inc.* (Service Date March 19, 2001) (revoking a class exemption where a substantial question of fact and law existed as to whether the target property was a rail line). Each of the foregoing cases involved, as does the instant petition, fundamental questions of fact and law which required the Board to conduct a more detailed inquiry than could be conducted on the basis of the record established under the exemption procedure.

No matter whether Riffin approaches this Board under 49 U.S.C. §10901 or 49 U.S.C. §10902, he would not be entitled to use the class exemption regulations. He has failed to provide the basic factual information necessary for the Board to determine whether there really is a transaction in the first instance, and his purported transaction is so controversial that it is inappropriate for handling under the expedited procedures.⁸

⁸ The case that Riffin cites, STB Docket No. AB 6 (Sub No. 430X), *BNSF Railway Company – Abandonment Exemption – In Oklahoma County, OK, slip op.* (Service Date January 26, 2007) (“Oklahoma”) is inapposite not only because it was brought under 49 C.F.R. §1152 Subpart F, which relates to expedited abandonments in

Moreover, Riffin refers to various broad policy goals of 49 U.S.C. §10101 without explaining in any way their relevance to the instant proceedings. He alleges that the following provisions of 49 U.S.C. §10101 support his position, but gives no factual or legal basis for his assertions:

(2) to minimize the need for Federal regulatory control over the rail transportation system and to require fair and expeditious regulatory decisions when regulation is required;

No information or argument is provided to support the assertion that this policy would be advanced in the instant case.

(4) to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense;

No information or argument is provided to support the assertion that this policy would be advanced in the instant case.

(7) to reduce regulatory barriers to entry into the industry;

If Riffin were able to demonstrate that an actual transaction really exists, this policy statement might apply. Absent a real transaction, it is hard to imagine how this provision is relevant.

(14) to encourage and promote energy conservation;

No information or argument is provided to support the assertion that this policy would be advanced in the instant case.

situations where the line has been out of use for more than two years, but also because it involved facts not analogous in any way to the facts of the instant matter.

(15) to provide for the expeditious handling and resolution of all proceedings required or permitted to be brought under this part.

No information or argument is provided to support the assertion that this policy would be advanced in the instant case.

The Board cannot grant Riffin's request for an individual exemption because he has not provided anything more than conclusory statements included in paragraphs 19 and 20 of the Motion for Determination. There is no discussion of the requirements of 49 U.S.C. §10502 (a) or 49 C.F.R. Part 1121. The Board should therefore decline to act on Riffin's request for a determination of exemption under 49 C.F.R. Part 1150.

CONCLUSION

Riffin fails to cure the Notice's fundamental deficiencies with respect to establishing ownership of the target line or the existence of any transaction that would result in Riffin's acquisition of that line. The Notice is incomplete, false and misleading. It is completely insufficient to allow the Board to determine whether in fact there is a transaction, and then the purported transaction may appropriately be handled under the expedited exemption procedures. Accordingly, the Notice should be revoked pursuant to 49 U.S.C. §10502(d).

WHEREFORE, and in view of the foregoing, the MTA respectfully reiterates its request that this Board revoke the exemption in this proceeding.

Respectfully submitted,

Handwritten signatures of Charles A. Spitulnik and Allison I. Fultz, with a horizontal line drawn across them.

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Counsel for the Maryland Transit
Administration

Date: March 6, 2007

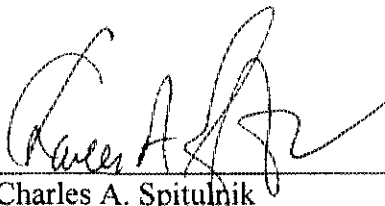
Certificate of Service

I hereby certify that I have this 6th day of March, 2007, caused to be served a copy of the foregoing Comments of the Maryland Transit Administration on James Riffin's Response to CSXT, MTA and BSM Comments and Motion for Determination upon the following parties of record by first class mail with postage prepaid and properly addressed:

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Timonium, MD 21093.

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Baltimore Streetcar Museum, Inc.
P. O. Box 4881
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Charles A. Spitulnik